

82-1216

No. 82-

Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

In the Supreme Court of the United States

October Term, 1982

WORLDWIDE CHURCH OF GOD,
Petitioner,

vs.

RICHARD A. GIPE,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF
CALIFORNIA, FOURTH APPELLATE
DISTRICT, DIVISION 2**

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QUESTIONS PRESENTED FOR REVIEW

Under the First Amendment free exercise and establishment clauses as applied to the states through the Fourteenth Amendment, the questions presented are:

1. Whether a civil court, in a religious controversy between a hierarchical church and one of its ministers, can compel a disgorging of all the religious principles of a church, so the court may scrutinize the same to determine which religious principles are "relevant," and then "apply" those religious principles in order to resolve the religious controversy.

2. When the church officials of a hierarchical church purposely use the religious concept, "confusion and division," in formulating a notice of termination to one of its ministers, is the resolution of the meaning of that religious concept subject to judicial review or must the court defer to the authoritative ecclesiastical body of the church.

PARTIES

The parties in the Court of Appeal below were World-wide Church of God, Petitioner, the Superior Court of the State of California for the County of Orange, Respondent, and Richard A. Gipe, Real Party in Interest. The Superior Court is not named as a party in this Petition in that said court has no interest in this proceeding.

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No. 82-

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WORLDWIDE CHURCH OF GOD,
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vs.

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Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF
CALIFORNIA, FOURTH APPELLATE
DISTRICT, DIVISION 2**

The Worldwide Church of God (hereinafter, the "Church" hereby respectfully petitions for a Writ of Certiorari to review the judgment of the Court of Appeal of the State of California, Fourth Appellate District, Division 2, which denied a Petition for Writ of Prohibition/Mandate which sought an order for review of a judgment of the Appellate Department of the Superior Court of the State of California for the County of Orange. Said judgment reversed a summary judgment granted in Church's favor by the Municipal Court, and remanded the matter to the Municipal Court for trial. In its remand, the Appellate Department instructed the trial court to determine whether or not a defrocked minister of Church had "caused further confusion and division in the Church,"

and that in doing so, the trial court may make some inquiry into the doctrinal teachings of the Church so long as the trial court "accepts and applies the relevant religious principles" of the Church in reaching its conclusion.

OPINIONS BELOW

The judgment of the Court of Appeal (App. A, p. A1)* is not reported. The order of the Supreme Court of the State of California, denying a hearing (App. A, p. A2), is not reported. The judgment of the Superior Court of Orange County, Appellate Division (App. A, p. A3) is also not reported.

JURISDICTION

The judgment of the Court of Appeal for the State of California, Fourth Appellate District, Division 2, was entered on August 26, 1982. Timely petition was made to the California Supreme Court for hearing. The order of the Supreme Court of the State of California denying a Petition for Hearing was entered on October 21, 1982. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment 1:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"

*References to the documents in the Appendices will be to either Appendix A or B followed by the page number of the Appendix where the particular document is found, such as "App. A, p. A2," etc.

STATEMENT OF THE CASE

Summary

Respondent (hereinafter "Mr. Gipe") is a former minister of the Church who was defrocked and fired for, among other things, preaching heresy, disloyalty, and "causing confusion and division in the Church" contrary to the doctrine of the Church. As a matter of Christian charity, upon his termination he was conditionally promised that he would be paid a severance pay benefit of one week's pay for each year of prior service with the Church if, among other things, he did not "cause further confusion or division" in the Church.

Subsequently, the Church received information that, among other things, Mr. Gipe had, three days after his termination, started his own competing "Family Church of God" (with himself as President) consisting of former members of the local Worldwide Church of God congregation he had pastored. Based upon the information received, the appropriate ministers of the Church made a doctrinal determination that Mr. Gipe had caused "further confusion and division in the Church" according to Church teachings, and that Mr. Gipe should not receive any termination pay.

The Municipal Court granted summary judgment in response to the Church's motion based on, among other things, that the court was without jurisdiction under the religious clauses of the First Amendment.

The Appellate Department of the Superior Court reversed the summary judgment, and in its remand, instructed that the trial court, in determining whether or not Mr. Gipe "caused further confusion and division in

the Church" may make some inquiry into the doctrinal teachings of the Church so long as the trial court "*accepts and applies the relevant religious principles*" of the Church in reaching its conclusion.

Statement of Relevant Facts

Mr. Gipe was employed full time by the Church¹ as an ordained minister pastoring the Church's local congregation at Garden Grove, California (Declaration of Al Dennis, hereinafter "Dennis Dec.", Paras. 3 and 6, App. B, pp. A13-A14). In early 1979, numerous negative reports were received from the local congregation Mr. Gipe was pastoring, various doctrinal disagreements became evident, and as a result of this and other reasons, he was instructed to return to Church headquarters for classes in the Church's theological school (Dennis Dec., Paras. 5-7, App. B, pp. A13-A14; Declaration of Leroy Neff, hereinafter, "Neff Dec.", Paras. 12-15, App. B, pp. A16-A17).

When Mr. Gipe failed to begin the classes as directed, the Director of Pastoral Administration for the Church, Roderick C. Meredith, one of Mr. Gipe's superiors, forwarded Mr. Gipe a letter (hereinafter, "Meredith letter") dated April 4, 1979, notifying him of his termination for "cause." In the letter Mr. Gipe was notified that his ministerial credentials were being revoked and that he was to return all Church property within a week. The letter then stated, in pertinent part, as follows:

1. The Church is an international evangelical religious organization incorporated and headquartered in California. Consistent with its fundamentalist reading of Scripture, it is hierarchically structured; its Pastor General in Church doctrine, Christ's Apostle and Ambassador, is the spiritual and temporal leader of the Church (see *People ex rel. Deukmejian v. Worldwide Church of God*, (1981) 127 Cal.App.3d 547, 550, 178 Cal.Rptr. 913, footnotes 2 and 3).

"If you cooperate in this matter (of returning Church property) and cause no *further* confusion or division,² we will extend to you the courtesy of a week for a year of service of termination pay." (Meredith letter, App. B, p. A22).

Three days later, on April 7, 1979, Mr. Gipe attended a pre-planned organizational meeting of the "Family Church of God" with 40 former members of the Worldwide Church of God congregations he had previously pastored. At said meeting, Mr. Gipe became the President of the newly-formed competing "Family Church of God" (see Declaration of Stuart Meier, attaching a letter of John Kerley, a former elder of the Church, App. B, pp. A25-A27 and letter of Arthur Morton, App. B, p. A24).

Leroy Neff, area coordinator of the Church for southwestern United States, and one of Mr. Gipe's superiors, received several letters confirming Mr. Gipe had started his own competing "Family Church of God" (see "Inter-office" Memo of Mr. Neff, hereinafter, "Neff Memo," App. B, p. A23).

For this reason, among others, Mr. Neff notified the Church Ministerial Services office to immediately halt any termination pay (Neff Memo, App. B, p. A23). This instruction was based on an ecclesiastical determination

2. The term "confusion or division" in the Church is an ecclesiastical and doctrinal concept of the Worldwide Church of God based on certain scriptures. (See footnote 5.) The act by a minister of the Worldwide Church of God of "causing strife, confusion or division . . . or . . . any other act or attitude deemed contrary to scripture," is deemed a basis for suspension and termination of a minister (see Declaration of Roderick C. Meredith, Para. 11, hereinafter "Meredith Dec.," App. B, pp. A20-A21). Mr. Gipe was terminated and denied severance pay based on an ecclesiastical decision that, among other things, he had been "causing confusion and division in his congregation specifically, and among members of the Church in general *contrary to the doctrine of the Church*." (Meredith Dec., Para. 13(a), App. B, p. A21; Neff Dec., Para. 17(a), App. B, pp. A17-A18).

by the Church hierarchical authorities that Mr. Gipe had *"caused further confusion and division in the Church,"* in violation of Church doctrine and of the instructions in Mr. Meredith's letter (Neff Memo, App. B, p. A23, and Neff Dec., Paras. 18-22, App. B, pp. A18-A19).

On or about May 14, 1979, Mr. Gipe filed a complaint with the Department of Labor for the State of California (hereinafter the "Labor Commission") for, among other things, severance pay. The Labor Commission Hearing Officer denied Gipe's other claims, but granted severance pay of \$3,269.00 based on Mr. Meredith's letter, finding that it was a "promise . . . at the time of termination." (See ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER, App. B, pp. A28-A29).

On appeal by the Church to the Municipal Court, Orange County, the Honorable Alan Plaia, on December 15, 1980, granted the Church's motion for summary judgment which was based on the grounds, among others, that involvement of the court in deciding whether Gipe had *"caused further confusion and division in the Church"* would violate the First Amendment of the United States Constitution (the pertinent portion of said motion for summary judgment is set forth in App. B, at p. A33).

On Mr. Gipe's appeal to the Superior Court, the Appellate Department found that *there was a triable issue of material fact as to whether or not Mr. Gipe caused "further confusion or division within the Church."*³

3. The Labor Commission, as attorneys for Mr. Gipe, argued in their opening brief before the Appellate Department that:

"Triable questions of fact remain to be resolved as to whether appellant complied with the two terms which conditioned his receipt of severance pay:

"(a) The return of Church property

"(b) Causing no further confusion or division within the church.

(Continued on following page)

The appellate department reversed the summary judgment and held as follows:

"While the issue of whether appellant engaged in further confusion and division within the church might require some inquiry into doctrinal teaching, both *Watson v. Jones*, supra, and *Jones v. Wolf*, supra, permit such an inquiry, so long as the civil court accepts and applies the relevant religious principles established by the highest church authority."⁴ (App. A, p. A9).

Footnote continued—

"In his declaration appellant asserts that both terms were complied with."

It is this "triable issue of material fact" which the trial court must determine by "accepting and applying" the "relevant religious principles" of the church.

4. The decision of the Appellate Department was apparently compelled by a prior opinion by the Court of Appeal in an ancillary issue in the same case, *Gipe v. Superior Court*, (1981) 124 Cal.App.3d 617, 177 Cal.Rptr. 590, in which the court found that:

"(Mr. Gipe) was promised one week of severance pay for each year of service if he . . . caused no further confusion or division within the Church." (Emphasis added, 124 Cal. App.3d at p. 621, 177 Cal.Rptr. at p. 591).

The court then concluded by holding that:

"The only questions appear to be whether the Church is required to pay severance pay conditionally promised and whether the conditions were performed. That is a contract matter that can be resolved without resolving the ecclesiastical controversy between petitioner and the Church." (Emphasis added, 124 Cal.App.3d at pp. 628-629, 177 Cal.Rptr. at p. 596). (Pertinent portions of the court's opinion are set forth in Appendix A at p. A10).

REASONS FOR GRANTING THE WRIT

The judgment of the court below vests the trial courts with unconstitutional authority to inquire into doctrinal teaching of a church and to usurp the ecclesiastical authority of the hierarchical church officials to determine what are the "*relevant religious principles*" of said church, then to *apply* those relevant religious principles in resolving the religious controversy.

The judgment below, if permitted to stand, would be an absolute transgression of the right to free exercise of religion under the First Amendment of the United States Constitution, would constitute state "establishment of religion" and would put the court's stamp of approval on a civil court's sitting as a court of ecclesiastical review over the ecclesiastical decisions of a church. In effect, courts will now have authority to substitute their judgment as to the "relevant" religious principles and the "application" of said principles resolving ecclesiastical disputes as to the meaning of religious concepts.

LAW AND ARGUMENT

Civil Courts Have No Jurisdiction to Decide Ecclesiastical Controversies, i.e., "Causing Confusion and Division in the Church," or to Apply a Church's Religious Principles in Doing So.

The records of history are full of the accounts of religious intolerance which led the early founders of this nation to insist upon the First Amendment to the United States Constitution. For this reason, "Freedom of Press, Freedom of Speech, Freedom of Religion are in preferred position". *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L.Ed. 1293 at p. 1300 (1943).

The values underlying the Religion Clauses of the First Amendment "have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance." *Wisconsin v. Yoder*, 406 U.S. 205, 216, 92 S.Ct. 1526, 1533 (1972).

The First Amendment has built a "wall of separation" between the Church and the state. In *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), it was said, "We could not approve the slightest breach."

As Justice Clark stated in *School District of Abington Tp. v. Schempp*, 374 U.S. 203, 225, 83 S.Ct. 1560, 1573 (1963),

"The breach of neutrality that is today a trickling stream may all too soon become a raging torrent. . . ."

In order to avoid breaching that neutrality, this court has developed in property dispute cases the "neutral principles of law" approach which defers the resolution of religious controversies to ecclesiastical authorities. *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S.Ct. 601 (1969); *Jones v. Wolf*, 443 U.S. 595 (1979).

Here, however, we have a great breach where the trial courts are under a duty to determine the "relevant" religious doctrine and then "apply" that doctrine, in resolving a religious controversy. The California Courts' edict demands that the trial courts first determine which "*religious principles*" of a Church are *relevant*⁵ to the religious controversy of whether or not a former minister caused "confusion and division in the Church" and then commit to understanding those "religious principles." The trial court, would then have to *apply*⁶ the religious prin-

5. Some of the relevant religious principles applicable to the determination of whether or not plaintiff caused "confusion or division" in the Church are as follows:

Isaiah 42:21: "The LORD is well pleased for his righteousness' sake; he will *magnify the law*, and make it honorable."

Romans 16:17: "Now I beseech you, brethren, mark them which cause *divisions* and offenses *contrary to the doctrine* which you have learned; and avoid them."

I Corinthians 14:33: "For God is not the author of *confusion*, but of peace, in all churches of the saints."

James 3:16: "For where envying and strife is, there is confusion and every evil work."

The court will truly become an ecclesiastical court if it attempts to apply these religious principles.

6. In *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976), at p. 714, the court stated in a footnote:

"Civil judges obviously do not have the competence of ecclesiastical tribunals in *applying* the 'law' that governs ecclesiastical disputes, as *Watson* cogently remarked, 13 Wall., at 729, 20 L.Ed. 666:

'Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is

(Continued on following page)

ciples to the facts giving rise to the religious controversy and determine if said facts constitute "confusion and division in the Church" according to said "religious principles."

Is this the application of "neutral principles of law" or the application of the Judeo-Christian doctrine of the Worldwide Church of God? The attempted actual application of the California Court's mandate is going to be viewed as absolute error in the religious community as well as a blatant constitutional transgression.

The court below is unwittingly attempting to vest the trial court with ecclesiastical jurisdiction that constitutionally is exclusively reserved to church tribunals. The United States Supreme Court considered this "unquestioned" 110 years ago in *Watson v. Jones*, 13 Wall. 679 (1872):

"The right to organize voluntary religious associations . . . to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal

Footnote continued—

not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.'"

to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for' 13 Wall., at 728-729, 20 L.Ed. 666 (emphasis supplied)." (As quoted in the *Serbian case*, supra, 96 S.Ct. at p. 2381).

The application of the Appellate Department's reading would in effect be adopting the State of Georgia's legal theory for resolving religious controversies⁷ as it existed prior to the enlightenment of *Presbyterian Church v. Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601 (1969), and its progeny.⁸

The Supreme Court held that what was required in order to be in conformity with the mandate of the First Amendment was that *the Church* apply the relevant religious principles to the religious controversy. That the Church would then arrive at the *ultimate finding*. The trial court was then bound by and would "accept" and "apply" that finding.

7. The Georgia legal theory was referred to as the "implied trust" theory. The Georgia court, like the edict in this Appellate Department's opinion, did make inquiry into the religious doctrine of the Church and then applied the same to the underlying ecclesiastical controversy. The U.S. Supreme Court rejected this legal theory and adopted the "neutral principles of law" approach. Upon analysis, it is apparent that "neutral principles of law" only has reference to nonecclesiastical language and concepts, to the complete exclusion of ecclesiastical law ("religious principles"). See *Jones v. Wolf*, 99 S.Ct. 3020 at p. 3026.

8. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372; *N.L.R.B. v. Catholic Bishop*, 440 U.S. 490, 99 S.Ct. 1313 (1979); *Jones v. Wolf*, 99 S.Ct. 3020, 61 L.Ed.2d 775. See also *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960).

This is what the Church did in this case, and concluded that the conduct of its dissident minister did cause "confusion and division in the Church." (See Neff memo, App. B, p. A23; Neff Dec., Paras. 18-22, App. B, pp. A18-A19). Therefore, the trial court properly "accepted" and "applied" the Church's finding and, hence, granted Summary Judgment.

In the Appellate Department's opinion, its finding that there was a question of fact as to whether or not the dissident minister's conduct violated the Church's *religious principles* against confusion and division in the Church, refuted the findings of the Church. In effect, *the Appellate Department sat as an Appellate Court over the Church's ecclesiastical adjudication.*

A reference from *Jones v. Wolf* serves to illustrate that the "neutral principles of law" approach permits civil court review only in "purely secular terms," of title or ownership, and not review or reliance on "religious precepts":

"The neutral principles method . . . requires a civil court to examine certain religious documents. . . . In undertaking such an examination, a civil court must take special care to scrutinize the document in *purely secular terms*, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If . . . the interpretation of the instrument(s) . . . require the Civil Court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the

authoritative ecclesiastical body." (Emphasis added).
(99 S.Ct. 3026, 61 L. Ed. 2d 775).

To paraphrase:

"If the interpretation of the instrument (the letter regarding severance) requires the Civil Court to resolve a religious controversy (whether the dissident minister caused further confusion and division in the Church)⁹ then the court must defer to (not apply) the resolution of the doctrinal issue by the authoritative ecclesiastical body."

As this court stated in *Thomas v. Review Bd. of Indiana Employment Sec.*, 450 U.S. 707, 101 S.Ct. 1425 (1981):

"Courts are not arbiters of scriptural interpretation." (Emphasis added, 101 S.Ct. at p. 1431).

Here we have not only what as a matter of law is a purely ecclesiastical issue, i.e., the determination as to whether or not "confusion or division" was caused in the church. Here we also have that issue decided against the

9. Similar religious controversies arose during the days of the Apostle Paul, and even the Roman government refused to take jurisdiction to decide them:

"Now when Gallio was procounsel of Achaia, the Jews with one accord rose up against Paul and brought him to the judgment seat,

"saying, 'This fellow persuades men to worship God contrary to the law.'

"And when Paul was about to open his mouth, Gallio said to the Jews, 'If it were a matter of wrongdoing or wicked crimes, O Jews, there would be reason why I should bear with you.

"'But if it is a question of words and names and *your own law*, look to it yourselves; for I do not want to be a judge of such matters.'

"And he drove them from the judgment seat." (Emphasis added, Acts 18:12-16, *The New King James Version*).

defrocked and dissident minister by the highest church adjudicatories.

The Constitution is the bit and bridle restraining a State's natural and historic proclivity toward persecution and oppression. It is the court that holds the reins.

We respectfully suggest that the Appellate Department dropped the reins when it reversed the judgment against the dissident minister who admittedly committed what the Church would consider the highest act of infidelity—a spiritual treason, if you will—the commencing of his own church and the pirating of members that were entrusted to his spiritual and physical care.

CONCLUSION

It is clear case law of this Court, based on the First Amendment of the United States Constitution that a civil court may not resolve ecclesiastical controversy, nor may it resolve a property or title dispute by relying on court interpretation or application of *religious precepts* (or "religious principles").

Important questions of constitutional law are therefore presented as to the extent a civil court may inquire into and apply religious doctrine, if at all. Petitioner urges that the Judgment below has given permission for the court to go far beyond the constitutional limit.

Therefore, it is respectfully urged that this Court grant review by writ of certiorari to prevent the "wall of separation" from being seriously and irreparably breached.

Respectfully submitted,

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DATED: January 17th, 1983

A1

APPENDIX

APPENDIX A

(Filed August 26, 1982)

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

4 Civil NO. 29210

COUNTY NO. AP3260

WORLDWIDE CHURCH OF GOD,
Petitioner,

vs.

SUPERIOR COURT, ORANGE COUNTY,
Respondent,

RICHARD A. GIPE,
Real Party in Interest.

THE COURT:

The petition for writ of prohibition/mandate is
DENIED.

McDaniel, J.
Acting Presiding Justice

A2

CLERK'S OFFICE, SUPREME COURT

4250 State Building

San Francisco, California 94102

OCT 21 1982

I have this day filed Order

HEARING DENIED

In re: 4 civil No. 29210

Worldwide Church of God

vs.

Superior Court, Orange
(Gipe)

Respectfully,

Clerk

(Filed June 22, 1982)

**ENTERED IN THE REGISTER OF ACTIONS ON
June 22, 1982**

LEE A. BRANCH, County Clerk By K. M. OWENS Deputy

**APPELLATE DEPARTMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

CASE NO. AP-3260

**RICHARD A. GIPE,
Plaintiff and Appellant,**

vs.

**WORLDWIDE CHURCH OF GOD, a California
Corporation,
Defendant and Respondent.**

HON. ALAN A. PLAIA, JUDGE

**JUDGMENT ON APPEAL FROM THE MUNICIPAL
COURT OF THE CENTRAL ORANGE COUNTY
JUDICIAL DISTRICT**

This matter having been argued and submitted, and fully considered, judgment is ordered as follows:

It is ORDERED AND ADJUDGED that the summary judgment entered in the Municipal Court of the above-designated Judicial District, County of Orange, State of California, in the above-entitled cause be and the same is hereby reversed.

The central question presented is whether the trial court erred in granting Respondent's motion for summary

judgment because triable issues of fact existed. We have concluded this question must be answered in the affirmative.

Appellant was an ordained minister of Respondent church. Because of doctrinal disputes Appellant's employment was terminated. He was informed of this action by a letter dated April 4, 1979. The letter stated, in pertinent part, as follows:

"You should return all property of the Church, including all church files, office equipment, stationery, telephone lists, credit cards, local church funds, or any items purchased with headquarters or local church funds, ministerial manuals, YOU manuals and ministerial credentials.

"This should be delivered to the Ministerial Services office in the Hall of Administration within one week.

"If you cooperate in this matter and cause no further confusion or division, we will extend to you the courtesy of a week for a year of service termination pay."

Appellant admittedly did not return the listed items within one week. The materials were picked up on May 25, 1979 by a church member, who signed a receipt attesting to Appellant's full cooperation and compliance with the conditions of the termination letter. Also, in mid-April 1979 a new religious group, The Family Church of God, was organized with Appellant as its president.

Appellant filed a complaint with the California Labor Commission alleging Respondent failed to pay him certain items of compensation, including the sum of \$3,269.00 in severance pay. After a hearing, the Labor Commissioner awarded Appellant the severance pay, but denied all of his other claims.

Pursuant to a provision of the Labor Code, Respondent appealed the Commissioner's decision to the Municipal Court for a trial de novo. After the matter was set for trial, Respondent filed a motion for summary judgment.

The motion was supported by affidavits and documents contending the decision to extend a former employee severance pay is a matter within the sole discretion of the Pastor General of the church. In this case the only basis for Appellant claiming severance pay was the termination letter. Since he failed to return the Church's property as specified, and caused further confusion and division by participating in the creation of the new religious group, Appellant was not entitled to the severance pay.

Appellant responded stating that during his tenure as a minister he was told a severance pay policy existed, and that he would be taken care of and never suffer any financial want. After receiving the termination notice, Appellant wrote to the church's administration stating he felt it was Respondent's duty to pick up the materials. Later, he was contacted by an attorney representing Respondent who told him arrangements would be made for a member of the church to recover the items in Appellant's possession.

Appellant also denied causing any further confusion or division within the church. He alleges that after his termination he was contacted by former members of Respondent and asked to continue meeting with them. As a result, the Family Church of God was formed. The new organization has a policy of not discussing the problems surrounding the break away from Respondent.

A motion for summary judgment may be granted only where there is no triable issue as to any material fact. Code of Civil Procedure §437c; *Stationers Corp. vs. Dun*

& Bradstreet, Inc. (1965) 62 Cal.2d 412, 417; *Robinson vs. San Francisco* (1974) 41 Cal.App.3d 334, 337. Since an order granting the motion eliminates the right to a trial, the moving party's declarations are strictly construed and the opposing party's declarations liberally construed. *Stationers Corp. vs. Dun & Bradstreet, Inc.*, *supra*; *Hepp vs. Lockheed-California Co.* (1978), 86 Cal.App.3d 714, 717.

Where the terms of a contract are ambiguous or uncertain and it is necessary to examine extrinsic circumstances to ascertain the intent of the parties, the trial court has a duty to construe the contract's language only after the parties are afforded an opportunity to produce evidence surrounding its effect and the conduct of the parties relative thereto. *Walsh vs. Walsh* (1941), 18 Cal.2d 439, 443-444; *Loree vs. Robert F. Driver Co.* (1978), 87 Cal.App.3d 1032, 1039-1040; *Daugherty Co. vs. Kimberly-Clark Corp.* (1971), 14 Cal.App.3d 151, 157; *Elliott vs. Occidental Life Ins. Co.* (1964), 225 Cal.App.2d 510, 515. It has been held that if a fact relied upon by the moving party is premised upon the interpretation of an ambiguous written instrument, a triable issue is presented and a summary judgment motion must be denied. *Heber vs. Yaeger* (1967), 251 Cal.App.2d 258, 262.

In the present case the April 4th letter sets forth two conditions; cooperate in the return of the property to Respondent, and cause no further confusion or division. Since the letter uses the word "and", Appellant had to comply with both conditions in order to be entitled to receive the severance pay.

A triable issue of fact clearly appears to exist with respect to the second condition. Respondent's moving papers merely show a new church was formed soon after Appellant's employment was terminated. Appellant denies he was the motivating cause behind the creation of the

church and states it has a policy of not discussing the break with Respondent.

Respondent's contention Appellant failed to comply with the first condition is premised on the theory that he was required to return the church's property within one week. Since this admittedly did not occur, Appellant lost the right to receive severance pay.

However, the critical language of the letter requires Appellant to "cooperate" in the return of the church property. Within a few days after receiving the termination notice, Appellant informed Respondent the material had been collected and packed, and suggested the church send someone to pick it up. Although Respondent disclaimed his authority to do so, the employee who acquired the property signed a statement attesting to Appellant's cooperation in the matter.

That part of the letter stating the property be returned within one week is preceded by the word "should". In at least one context, this word has been interpreted as being permissive, rather than mandatory, in nature. *Cuevas vs. Superior Court* (1976), 58 Cal.App.3d 406, 409.

Under these circumstances we conclude triable issues of material fact exist. Therefore, the motion for summary judgment should have been denied.

Another point which needs to be disposed of in this appeal is Respondent's contention the lower court's judgment must be affirmed because its status as a church prohibits courts of law from reviewing the severance pay matter.

In *Watson vs. Jones*, 80 U.S. 679, 20 L.Ed. 669 (1872) the United States Supreme Court established the following rule limiting the role of civil courts in the resolution of religious controversies:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." (at p. 727)

In *Jones vs. Wolf*, 443 U. S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020 (1979), the Supreme Court held that, in church property disputes, state courts may apply neutral principles of law in reviewing local charters, state statutes and other documents if the Court's scrutiny can be done in purely secular terms. This approach has been adopted in California. *Protestant Episcopal Church vs. Barker* (1981), 115 Cal.App.3d 599, 611-615; *Presbytery of Riverside vs. Community Church of Palm Springs* (1979), 89 Cal.App.3d 910, 919-923. Furthermore, it has been held the rule that civil courts must accept the decision of the highest church tribunal in regard to internal church disputes is inapplicable in cases involving secular disputes. *General Council on Fin. Etc. vs. Superior Court*, 439 U.S. 1355, 1369, 58 L.Ed.2d 63, 99 S.Ct. 35 (1978) (Justice Rehnquist, Circuit Justice); *Barr vs. United Methodist Church* (1979), 90 Cal.App.3d 259, 273-274.

Unlike *Serbian Orthodox Diocese vs. Milivojevich*, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976), in the present case there is no issue regarding Respondent's right to terminate Appellant's employment. The only question is whether Appellant was entitled to receive severance

pay upon his termination. While the issue of whether Appellant engaged in further confusion and division within the church might require some inquiry into doctrinal teaching, both *Watson vs. Jones*, supra, and *Jones vs. Wolf*, supra, permit such an inquiry, so long as the civil court accepts and applies the relevant religious principles established by the highest church authority.

Accordingly, the summary judgment is reversed and the matter remanded to the Municipal Court for further proceedings not inconsistent with this opinion.

Dated this 22nd day of June, 1982.

/s/ Lloyd E. Blanpied, Jr.
Lloyd E. Blanpied, Jr., Presiding Judge

/s/ Leonard H. McBride
Leonard H. McBride Judge

/s/ Edward J. Wallin
Edward J. Wallin Judge

124 Cal.App.3d 617
Richard A. GIPE, Petitioner,

v.

SUPERIOR COURT of the State of California
FOR the COUNTY OF ORANGE, Respondent.
WORLDWIDE CHURCH OF GOD, Real Party
in Interest.

Civ. 25908.

Court of Appeal, Fourth District, Division 2.

Oct. 16, 1981.

As modified on Denial of Rehearing Nov. 12, 1981.
Hearing Denied, Dec. 9, 1981.

* * *

Division of Labor Standards Enforcement by Laurence
T. Emert, Los Angeles, for petitioner.

Rader, Helge & Gerson and Larry W. Darden, Pasa-
dena, for real party in interest.

No appearance for respondent.

OPINION

KAUFMAN, Acting Presiding Justice.

Petitioner seeks a writ of mandate directing the Appellate Department of the Orange County Superior Court to vacate its order disqualifying the State Labor Commissioner from representing petitioner in an appeal from a judgment of the municipal court denying him severance pay.

FACTS

For more than eight years petitioner was an ordained minister of the Worldwide Church of God, Inc.¹ (church or real party in interest), receiving compensation for his services from the church. In April 1979 he was discharged for alleged insubordination, heresy and disloyalty to the church. He was promised one week of severance pay for each year of service if he returned all property of the church to it and caused no further confusion or division within the church.

* * *

It is of course true that the cited constitutional provisions preclude civil courts from adjudicating disputes over questions of church practice or religious discipline, faith or doctrines. "However, when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy.

* * *

Real Party argues that permitting the Labor Commissioner to represent its former minister in these proceedings constitutes an impermissible state involvement in religious affairs and will have a chilling effect on the free exercise of religion—the church's discharge of a minister who fails

1. The Worldwide Church of God, Inc. is a California religious nonprofit corporation. It is one of many entities through which the Church of God, an unincorporated spiritual body, conducts its principal activities in the United States. The church employs approximately 490 full-time ordained ministers and serves a baptized adult membership of 67,000 worldwide in 704 congregations.

to abide by the tenets of the church. We believe not. The argument might be persuasive if the dispute were over the question of whether or not the church had the right to discharge petitioner, but no such question is involved. The only questions appear to be whether the church is required to pay severance pay conditionally promised and whether the conditions were performed. That is a contract matter that can be resolved without resolving the ecclesiastical controversy between petitioner and the church. We are unable to accept the argument that requiring a church to pay its discharged minister in accordance with its contract, will have a significant chilling effect upon the church's exercise of its right to discharge its ministers on account of doctrinal or other ecclesiastical differences.

Disposition

Let a peremptory writ of mandate issue to the Appellate Department of the Superior Court in and for the County of Orange commanding it to vacate its order disqualifying the Labor Commissioner from representing petitioner on appeal. The alternative writ heretofore issued, having served its purpose, is discharged.

McDANIEL and MORRIS, JJ., concur.

Hearing denied; KAUS, J., did not participate.

* * *

APPENDIX B

DECLARATION OF AL R. DENNIS

I, AL R. DENNIS, of Long Beach, California, hereby declare and state as follows:

(1) That I have firsthand personal knowledge of the facts herein stated and could and would competently testify thereto, under oath, if called as a witness.

(2) That I am a baptized member of the Worldwide Church of God. That I am a duly ordained minister of the Worldwide Church of God and have been since May 28, 1960.

(3) That I have been Pastor of the Long Beach congregation since July 1974. Prior to Richard A. Gipe's removal I was his immediate supervisor. After Gipe's termination, I also pastored his Garden Grove congregation of the Worldwide Church of God.

* * *

(5) In January 1979 it was brought to the attention of Pastoral Administration that Rick Gipe was not giving the proper support and respect that should be shown at all times but which was especially needed at that time. Also it was reported that much was being taught that was not in harmony with doctrine as set in the Church by Jesus Christ through his Apostle. Both I and Headquarters received a steady stream of information and complaints about Mr. Gipe's disagreement with the Church as well as failure to perform his duties. When I checked out these allegations I confirmed, among other things, the following:

- (a) Mr. Gipe's disagreements regarding the Church's doctrines, including those on Church government, tithing, ecumenism and prophecy.
 - (b) Refusal to anoint the sick on request.
 - (c) Criticism of Church Administration and the Pastor General of the Church both privately and from the pulpit.
 - (d) Promotion of a "third alternative" to the World-wide Church of God, meaning himself.
 - (e) Mr. Gipe's unavailability to serve the congregation due to outside business pursuits, educational classes, and babysitting at home while his wife worked.
- (6) The question was then left whether Pastoral Administration should discharge Gipe at that time or give him another chance. It was finally decided to give him another chance and he was told he would be replaced as the pastor of the Garden Grove Church and transferred to the Sabbatical program at Ambassador College.
- (7) On or about February 3, 1979, although knowing the Church had disapproved of his actions, as stated above, and that he was going to be transferred to the Sabbatical program he told the Garden Grove Church in Sabbath services nothing was wrong, that there was no reason for him to go on Sabbatical program, etc. This was, of course, a direct misrepresentation. On or about February 16 or 23, 1979, I and Mr. Leroy Neff, a fellow minister, confronted Mr. Gipe with the untrue statements from a tape recording of the meeting. As a condition of continued employment, we required that he immediately begin attending classes at Ambassador College, as determined by the Church, and begin the Sabbatical program. Mr. Gipe

A15

stated that several dozen people would leave the Church if he were required to come to Pasadena. Mr. Gipe failed to attend the classes and begin attending as required.

* * *

Executed this 17th day of November, 1980 at Long Beach, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Al R. Dennis
Al R. Dennis

DECLARATION OF L. LEROY NEFF

I, L. LEROY NEFF, of Pasadena, California, hereby declare and state as follows:

(1) That I have firsthand personal knowledge of the facts herein stated and could and would competently testify thereto, under oath, if called as a witness.

(2) That I am a baptized member of the Worldwide Church of God. That I am a duly ordained minister of the Worldwide Church of God and have been since June 7, 1958. That I am Mr. Herbert W. Armstrong's Regional Assistant for the Church in the Eastern United States. At the time of Richard Gipe's termination I was Area Coordinator of the Southern California, Nevada, Arizona and Southern New Mexico area of the church and Pastor of one of the Pasadena congregations.

* * *

(11) Without limitation upon the generality of the foregoing, the authorized person may terminate and suspend, disfellowship or refuse to reinstate any minister and deny any termination benefits for causing strife, confusion, or division; for continuing in the breaking of any of the commandments of God; persisting in a spirit of opposition, competition, or dissension; disloyalty to the church, its mission, work, or any of its institutions; or for any other act or attitude deemed contrary to Scripture, or in any manner whatsoever detrimental or threatening to the spiritual unity of the congregation or the spiritual welfare and growth of any of its individual members or prospective members.

(12) In about January, 1979, certain charges and complaints of improper conduct were brought to the Church's

attention regarding a field minister named Richard Gipe. In order to give Mr. Gipe an opportunity to re-orient himself and to become spiritually rejuvenated and re-dedicated to the service of the Church and Jesus Christ, Mr. Dennis Luker and Mr. Wilbur Berg, leading ministers in the Church who were at that time appointed to investigate these charges and to take appropriate action, told Mr. Gipe he would be required to attend a Sabbatical program for ministers at Ambassador College.

(13) On or about February 3, 1979, during a sermon to his congregation on the Sabbath following this directive, Mr. Gipe falsely told his flock that he had no problems with Headquarters regarding difficulties in doctrine and that he would not be required to go in for Sabbatical. These statements were patently untrue.

(14) In about February or March, 1979 I was given the responsibility of continuing an investigation of these complaints and to take appropriate action in the case.

(15) During about late February or March, 1979, Al Dennis, a fellow minister, and I confronted Mr. Gipe with the untrue statements from a tape recording of the meeting. As a condition of continued employment, we required that he immediately enter the classes at Ambassador College, as determined by the Church, and begin the Sabbatical program. Mr. Gipe stated that several dozen people would leave the Church if he were required to come to Pasadena. Mr. Gipe failed to enter said classes and begin attending as required.

• • •

(17) The reasons for his termination and later denial of termination benefits included but are not limited to the following:

- (a) Causing confusion and division in his congregation specifically, and among members of the Church in general contrary to the doctrine of the Church.

* * *

(18) Between April 4 and April 20, 1979 I learned from letters and personal information forwarded to Church Administration from members or former members of the Church that Gipe had formed or participated in forming a rival church consisting of some 40 former Worldwide Church of God members. This information confirmed Mr. Gipe is or was the president of this newly formed organization which was called the "Family Church of God" and which has subsequently been incorporated in California. The other officers and founding directors of that corporation are all now disfellowshipped ex-members of the Worldwide Church of God who had left the Church with Mr. Gipe, and are members in this newly formed Church pastored by Mr. Gipe. * * *

(19) Mr. Gipe in the past and after his termination continued in his attempts to harass and embarrass ministers and leaders and to divide and confuse members of the Worldwide Church of God and/or to take members after himself in a clear fulfillment of scripture and Biblical prophecy (Acts 20:30 "Also of your own selves shall men arise, speaking perverse things to draw away disciples after them.")

(20) Mr. Gipe continued attempting to justify all his actions, criticizing the Church and its leaders. His on-going personal hostility and apparent bitterness has produced division and confusion among the members of the congregation he pastored resulting in polarization of many members of the Garden Grove Church and others against the Worldwide Church of God and its leaders.

(21) Although Mr. Roderick C. Meredith, at that time the Director of Pastoral Administration (now Ministerial Services) offered to give Mr. Gipe courtesy severance pay provided he cooperated in the return within one week of church equipment and materials and that he cause no further confusion or division, Mr. Gipe failed to comply with these conditions.

(22) As a consequence of Mr. Gipe's failure to comply with the terms of the termination letter I directed that no termination pay be extended to Mr. Gipe.

* * *

Executed this 17th day of November, 1980 at Pasadena, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ L. Leroy Neff
L. Leroy Neff

DECLARATION OF RODERICK C. MEREDITH

I, RODERICK C. MEREDITH, of Pasadena, California, hereby declare and state as follows:

(1) That I have firsthand personal knowledge of the facts herein stated and could and would competently testify thereto, under oath, if called as a witness.

(2) That I am a baptized member of the Worldwide Church of God. That I am a duly ordained minister of the Worldwide Church of God and have been since December 20, 1952. That my office in the ministry is that of evangelist rank, which rank is the second highest office in the ministry.

(3) From January, 1979 until August, 1979 I was Director of Pastoral Administration (now "Ministerial Services") of the Worldwide Church of God for the entire world. I have served the Church in many different capacities over the years, including Director of Pastoral Administration (formerly called Superintendent of Church Administration) from 1961-1972, Deputy Chancellor, Professor of Theology and Dean of Ambassador College, the school which is sponsored by and trains the ministry of the Church. I hold a doctorate in Theology from Ambassador College. I am therefore thoroughly knowledgeable of the ecclesiastical doctrines, customs, teachings and practices of Church discipline and government.

* * *

(11) Without limitation upon the generality of the foregoing, the Pastor General or the person authorized by him may terminate and suspend, disfellowship or refuse to reinstate any minister and deny any termination benefits for causing strife, confusion or division; for continuing

in the breaking of any of the commandments of God; persisting in a spirit of opposition, competition, or dissension; disloyalty to the church, its mission, work, or any of its institutions; or for any other act or attitude deemed contrary to Scripture, or in any manner whatsoever detrimental or threatening to the spiritual unity of the congregation or the spiritual welfare and growth of any of its individual members or prospective members.

* * *

(13) That the plaintiff in this action, Richard A. Gipe, was relieved of his duties as a minister, his ministerial credentials were revoked and he was terminated on or about April 4, 1979. * * *

The reasons for his termination and denial of termination benefits include, but are not limited to:

- (a) Causing confusion and division in his congregation specifically, and among members of the Church in general contrary to the doctrine of the Church.

* * *

Executed this 18 day of November, 1980 at Pasadena, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Roderick C. Meredith
Roderick C. Meredith

WORLDWIDE CHURCH OF GOD

World Headquarters

Pasadena, California 91123

HERBERT W. ARMSTRONG
President and Pastor

DR. RODERICK C. MEREDITH
Director
Pastoral Administration

April 4, 1979)

Mr. Rick Gipe
3124 Yukon Avenue
Costa Mesa, CA 92626

Dear Mr. Gipe:

This letter is to give two weeks notice of dismissal as an employee and minister of the Worldwide Church of God with cause.

Your ministerial credentials have been officially revoked and you are in no way to hold yourself forth as a representative of the Worldwide Church of God nor are you to act in any ministerial capacity.

You should return all property of the Church, including all church files, office equipment, stationery, telephone lists, credit cards, local church funds, or any items purchased with headquarters or local church funds, ministerial manuals, Y.O.U. manuals and ministerial credentials.

This should be delivered to the Ministerial Services office in the Hall of Administration within one week.

If you cooperate in this matter and cause no further confusion or division, we will extend to you the courtesy of a week for a year of service of termination pay.

Sincerely, in Christ's name,

/s/ Roderick C. Meredith
Roderick C. Meredith

RCM/vws

INTEROFFICE

To Ted Herlofson Ministerial Services 4-20-79
From Leroy Neff Area Coordinator
Subject Rick Gipe

Mr. Meredith wrote Rick April 4, 1979 notifying him of his termination and instructing him to return his ministerial credentials and all church property to your office within one week.

It has now been over two weeks and he has not returned these items.

In addition, has has now started his own "Family Church of God" according to letters that have been forwarded to us.

Mr. Meredith's Letter stated that if he did not co-operate and return the items, and if he caused further confusion or division in the church we would not extend him the courtesy of a week for a year termination pay.

Therefore, please instruct the proper departments to immediately halt any termination pay.

/s/ Leroy Neff

Family CHURCH OF GOD
P.O. Box 1543
Main Station
Costa Mesa, CA. 92626

April 15, 1979

Bank Of Newport
Lafayette and 32nd St.
Newport Beach, CA. 92663

To Whom It May Concern:

At a meeting of the general membership held on April 14, 1979, it was decided to no longer do business as the W.W. Church of God. Located at 3055 Johnson Ave., Costa Mesa.

From this date forward we will be doing business as the Family CHURCH OF GOD.

The membership recognizes the following persons as principles and authorizes them to receive and disburse funds on their behalf until further notice:

Richard Gipe, President
Dennis Roberts, Vice President
Dorothy Ewall, Treasurer

/s/ Arthur F. Morton
Arthur Morton, Secretary

DECLARATION OF W. STUART MEIER

I, W. STUART MEIER, hereby declare:

(1) That I have firsthand personal knowledge of the facts herein stated and could and would competently testify thereto, under oath, if called as a witness.

(2) I am an employee of the Worldwide Church of God working in the Special Services area.

(3) That from time to time in the past I received letters from John Kerley, a former co-employee in the Letter Answering Department of the Worldwide Church of God, with whom I have been personally acquainted since at least 1966. Mr. Kerley is no longer a member of the Worldwide Church of God.

(4) Attached hereto as "Exhibit D-1" is a true copy of correspondence I received from Mr. Kerley in January, 1980. Said correspondence and the attachments are true and correct copies of the original writings received by me and of which I am the custodian. I recognize the signature on the correspondence as that of John Kerley as I am very familiar with the same from our earlier working relationship together.

(5) In Mr. Kerley's letter he explained that the Family Church of God was pastored by Richard Gipe, identified as the former pastor of the Santa Ana/Garden Grove congregation of the Worldwide Church of God (abbreviated "WCG"). (Last paragraph of page 1).

Mr. Kerley goes on to explain that he attended the first organizational meeting of the Family Church of God on April 7, 1979 and that Richard Gipe also attended the same meeting which was only two or three days

after his termination as a minister of the Worldwide Church of God. (Page 2, second full paragraph).

* * *

Executed this 17th day of November, 1980 at Pasadena, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ W. Stuart Meier
W. Stuart Meier

"EXHIBIT D-1"

January 22, 1980

Greetings Hosts and Friends,

Some have written and others have called and asked about my associations with the Worldwide Church of God.

* * *

I am an ordained elder by the laying on of hands in Chattanooga, Tennessee, June 14, 1975 by my ordination certificate from Mr. Herbert W. Armstrong and countersigned by Mr. C. Wayne Cole.

* * *

I currently attend morning services with the Family Church of God in Fullerton, California which church is pastored by Richard Gipe (formerly pastor of the Santa Ana/Garden Grove Church, WCG). Many of the concepts I write about, while not specifically taught or advocated by FCOG, are sparked by inspirational comments made by Rick or by comments from various of the members present. * * *

The Family Church of God (FCOG) came into existence with the first meeting on April 7, 1979 (1260

days before the Feast of Trumpets 1982). Of course it was several days latter that the incorporation papers were legally processed with the State of California. There were 40 members present (counting the baby) for that first meeting. Rick didn't plan to attend on 4/7 due to the WCG having placed him on Sabbatical, and any action unacceptable in any form or fashion would bring down the cruel wrath of the hierarchy (as so many ministers have had to learn). However, God intervened, for he used Mr. Roderick C. Meredith to send a letter which Rick received on either 4/5 or 4/6, such that Rick was able to attend that first meeting.

* * *

/s/ John

COMPLAINANT

RICHARD A. GIPE

DEFENDANT

WORLDWIDE CHURCH OF GOD, INC.

No. STA 18-79H-2251

**ORDER, DECISION OR AWARD OF THE
LABOR COMMISSIONER**

THE ABOVE-ENTITLED MATTER came on for hearing before the Labor Commissioner of the State of California on the 6th day of February, 1980, at Santa Ana, California. continued 13th day of February 1980 and the record was held open until May 29, 1980.

APPEARANCES:

For The Complainant:

IN PRO PER

For The Defendant:

LARRY DARDEN, Attorney at Law

C. STEPHEN HOWARD, Attorney at Law

Evidence having been offered, examined and considered, and the matter having been submitted for Order, Decision or Award, the Labor Commissioner makes the following Order, Decision or Award:

- X** Complainant recover from Defendant(s) as and for wages, or compensation \$3,269.00;
-Complainant recover from Defendant(s) as and for waiting time

penalties in accordance with the provisions of §203 of the Labor Code, and that the same shall not be subject to tax or other deduction \$.....;

.....Claimant and complainant recover from Defendant(s) as recovery of the sums paid out on defendant's(s') dishonored payroll check or draft \$.....;

.....Complainant take nothing by virtue of his/her complaint herein;

.....Other relief (specify)

The herein Order, Decision or Award is based upon the findings of fact and conclusions (reasons for Order, Decision or Award) annexed hereto and incorporated herein by reference.

The parties herein are notified and advised that said Order, Decision or Award shall become the final Order, Decision or Award of the Labor Commissioner and enforceable as a judgment by an appropriate the Superior Court within ten (10) days after service upon them unless they exercise their right to appeal to the appropriate superior court. In case of appeal the necessary filing fee must be paid by the appellant and appellant must serve upon the Labor Commissioner a copy of the appeal request.

DATED: June 11, 1980

Labor Commissioner
State of California
By /s/ Sara Vega
Sara Vega
Hearing Officer

FINDINGS OF FACT

Richard C. Gipe, Complainant filed a complaint with the Labor Commissioner on April 25, 1979 to recover wages from Worldwide Church of God, Inc., Defendant.

Both parties were duly served notice that a hearing would be held on 2-6-80 at 2:00 P. M. On February 5, 1980 the defendant appeared in court requesting for temporary stay and/or writ of prohibition. The temporary stay was denied. The Labor Commissioner asserts jurisdiction based on the employer-employee relationship that existed in this case. The hearing was held at the Labor Commissioner's Office on February 6, 1980 and continued to February 13, 1980 with the record open until May 29, 1980. Larry W. Darden, Attorney was representing the defendant at the initial hearings and was replaced by C. Stephen Howard, Attorney through the closing of the record.

Testimony and evidence presented shows that the defendant employed the complainant in June, 1970 to perform personal services as staff writer of the magazine Plain Truth. In November or December, 1972 the Church administration employed the complainant as Minister. Via a letter dated April 4, 1979 the defendant terminated the complainant with the effective date of termination April 18, 1979. The final rate of pay was \$1,484.00 per month.

According to the vacation policy, the complainant received all vacation pay vested up to the date of termination. The festival allotment was a benefit provided to employees who attended the festival. The complainant was terminated shortly before the ministerial festival. An annuity benefit plan did exist, however there was no evidence presented by either party to establish that the complainant qualified or did not qualify to receive any amount because the plan was strictly discretionary. At the time of termina-

tion the complainant was promised a week for each year of service of termination pay if he returned all the property of the church to the headquarter's Office within one week. A dispute existed regarding the return of the church property. The complainant contends he contacted the defendant by telephone and advised that the property was available for pick up within one week, and informed that he felt he should not incur the expense of transporting said property 60 miles out of his way at his expense. The defendant contends the complainant was promised termination pay if he delivered the property as requested. The defendant did pick up the property approximately three weeks to one month later.

CONCLUSIONS

Based on the above findings it is concluded that the complainant received all wages and/or benefits he was entitled to except for the severance pay.

Because an obvious dispute existed regarding this issue: it is the opinion of this Hearing Officer that in good faith, based on the intent or promise of the termination pay for "substantial service" performed throughout nine years of employment, the complainant is entitled to consideration of termination pay in the amount of \$3,269.00.

(Filed November 19, 1980)

Rader, Helge & Gerson

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Attorneys for Defendant
Worldwide Church of God

**MUNICIPAL COURT IN THE COUNTY OF ORANGE
STATE OF CALIFORNIA
CENTRAL DISTRICT**

No. 125975

RICHARD A. GIPE,
Plaintiff,

vs.

WORLDWIDE CHURCH OF GOD,
California Corporation
Defendant.

**NOTICE OF MOTION, AND MOTION: (1) TO DIS-
QUALIFY OR ENJOIN STATE FUNDED COUNSEL
FOR PLAINTIFF: (2) FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION FOR SUM-
MARY ADJUDICATION OF ISSUES, AND (3) FOR
AN ORDER ALLOWING THE HEARING OF MOTION
FOR SUMMARY JUDGMENT**

Date: Dec. 3, 1980
Division: 315
Time: 9:00 a.m.

TO PLAINTIFF, RICHARD A. GIPE and to HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on Wednesday, December 3, 1980, at 9:00 a.m., or as soon thereafter as the matter can be heard, in Division 315 of the above-entitled court, located at 700 Civic Center Drive West, Santa Ana, California, Worldwide Church of God, defendant in the above-entitled action, will move the court for an order disqualifying or enjoining the representation of plaintiff by state funded counsel, for an order allowing the hearing of its motions for, and for entry of summary judgment, or, in the alternative, for summary adjudication that certain issues are without substantial controversy.

The motion to disqualify or enjoin the representation of plaintiff by state funded counsel will be based on the ground that representation by said counsel, at State expense, constitutes an entanglement with and has a chilling effect on religion and the relationship between a church and its ministry and impermissibly injects the state into substantive ecclesiastical matters in contravention of the First Amendment, and Article 1, §4 of the California Constitution.

* * *

(7) That continuing to cause confusion and division in the Church did violate the terms and conditions of the termination letter to Gipe dated April 4, 1979.

(8) That the Church has made a finding that the plaintiff continued to cause confusion and division in the Church after receipt of the termination letter of April 4, 1979 in violation of the terms of the letter and this finding was an ecclesiastical decision binding on the Court and not subject to judicial review.

(9) That the court is without jurisdiction to review or question the fairness, propriety, or even an alleged discriminatory nature of a church's hierarchical policy re-

garding the wages or emoluments of employment extended to its ministry.

* * *

B. This Matter Is Based On An Ecclesiastical Ruling Which Is Binding Upon the Labor Commissioner.

Gipe also admitted that whether or not he continued to cause further confusion or division (one of the conditions for receipt of severance pay) "*is a very interpretive thing.*" Transcript, Vol. I, p. 61, lines 20-22. (Emphasis added.)

In *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 20 L.Ed. 666 (1871), the Supreme Court clearly placed review of church government and administration beyond the purview of civil authorities, stating that:

"... whenever the questions of discipline, or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." Id. at 727.

"Interpretation" of what is or is not "causing further confusion and division" in the religious context is something that is beyond State Labor Commissioner's ability to decide, much less to argue.

* * *

Dated: November 18th, 1980

Rader, Helge & Gerson
By /s/ Ralph K. Helge
Ralph K. Helge

Tuttle & Taylor
609 S. Grand Avenue, 13th Floor
Los Angeles, California 90017
Attorneys for Defendant,
Worldwide Church of God

Division of Labor Standards Enforcement

By: Laurence T. Emert

107 South Broadway, Room 5015

Los Angeles, CA 90012

213/620-2500

Attorney for Plaintiff/Appellant

**IN THE
APPELLATE DEPARTMENT OF THE SUPERIOR
COURT**

STATE OF CALIFORNIA, COUNTY OF ORANGE

APP. Dept. Case AP-3260

(OCMC No. 125975)

**Trial Court-Municipal Court
Central Orange Judicial District**

**RICHARD A. GIPE,
Plaintiff/Appellant,**

vs.

**WORLDWIDE CHURCH OF GOD, a California
corporation,
Defendant/Respondent.**

**APPELLANT'S OPENING BRIEF
APPEAL FROM THE MUNICIPAL COURT CENTRAL
ORANGE JUDICIAL DISTRICT**

*** * ***

(a) a triable issue of fact exists as to whether there was an express promise to pay severance pay and whether there was compliance with the conditions established by respondent for the receipt of severance pay.

In its April 4, 1979 termination letter, respondent confirmed what had been repeatedly represented to appel-

lant—the existence of a severance pay policy, benefits to be paid based upon length of service. Any contract, the terms of which are stated in words is called an express contract. Civil Code §1621. The words of an express contract may be oral or written—one party may use the words and the other may accept either in words or by his actions or conduct. 14 Cal Jur. 3d Contracts, §4.

Triable questions of fact remain to be resolved as to whether appellant complied with the two terms which conditioned his receipt of severance pay:

- (a) the return of church property
- (b) Causing no further confusion or division within the church

In his declaration, appellant asserts that both terms were complied with. His declaration contradicts and rebuts the declarations filed by respondent. Since statements of fact contained in opposition to a summary judgment motion are to be accepted as true, *Eagle Oil & Ref. Co. v. Prentice*, 19 Cal. 2d 553, 556 (1942), respondent's motion should have been denied. Triable issues remain to be passed upon at trial.

* * *

V

CONCLUSION

For all of the reasons set forth above, appellant respectfully requests that the lower court's entry of summary judgment be reversed, and the case remanded to the Municipal Court for a trial de novo on the merits of the claim.

DATED: 11/9/81

Respectfully submitted,

/s/ Laurence T. Emert

Laurence T. Emert

Attorney for Plaintiff/Appellant

No. 82-1216

Office - Supreme Court, U.S.
FILED
MAR 21 1983
ALEXANDER L. STEVAS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

WORLDWIDE CHURCH OF GOD,

PETITIONER,

v.

SUPERIOR COURT OF CALIFORNIA,
ORANGE COUNTY (RICHARD A. GIPE,
REAL PARTY IN INTEREST),

RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO
GRANTING OF WRIT OF CERTIORARI

ALBERT J. REYFF
Acting Labor Commissioner
of the State of California
By H. THOMAS CADELL, JR., Esq.
8765 Aero Drive, Suite 125
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(619) 237-7028

Attorney for Real Party in Interest
RICHARD A. GIPE

QUESTIONS PRESENTED

1. Does the Order of the Superior Court of Orange County, State of California, remanding the matter for trial before the Municipal Court constitute a final judgment by the highest court in the State of California?

2. Does there exist, in fact, a federal question over which this Honorable Court has jurisdiction?

JURISDICTION

The real party in interest, RICHARD A. GIPE, contends that this Honorable Court should not assume jurisdiction of this matter under the provisions of 28 U.S.C. § 1257(3) inasmuch as there is no final judgment by the highest court in the State of California and there is no federal question involved.

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No. 82-1216

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

WORLDWIDE CHURCH OF GOD,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
ORANGE COUNTY (RICHARD A. GIPE,
REAL PARTY IN INTEREST),

Respondent.

Respondent's Brief in Opposition to
Granting of Writ of Certiorari

ARGUMENT

I

THE MATTER IS NOT RIPE FOR CONSIDERATION BY THIS HONORABLE COURT BECAUSE THERE EXISTS NO FINAL JUDGMENT BY THE HIGHEST COURT IN THE STATE OF CALIFORNIA.

In order for this Honorable Court to assume jurisdiction pursuant to 28 U.S.C. 1257(3), it must first be shown that the judgment rendered by the highest court of the State of California is final.

The order of the Appellate Department of the Superior Court of California for the County of Orange reversed a summary judgment granted by the Municipal Court of Orange County and remanded the matter to that court for further proceedings. The Court of Appeal, Fourth Appellate District, Division 2, denied a petition for writ of prohibition/mandate to review the Superior Court's action on August 26, 1982. A petition for hearing

before the California Supreme Court was denied on October 21, 1982.

This Honorable Court in its decision in Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328, discussed the "very few" circumstances where the Court will assume jurisdiction by treating the decision on the federal issue as a final judgment despite the fact that there remain additional proceedings in the state courts. None of the circumstances is present in the instant case.

The outcome of the case in the trial court is not preordained by the ruling of the Superior Court; the highest court in the state has not published an opinion which will survive; there will be an opportunity to review any federal issue if, in fact, it is necessary; and the federal issue is not dispositive of

the case.

In the case of Gospel Army v. City of Los Angeles et al. (1947) 331 U.S. 543, 67 S.Ct. 1428, a final judgment was defined as one which ends the litigation by fully determining the rights of the parties, so that nothing remains to be done by the trial court "except the ministerial act of entering the judgment which the appellate court...directed." Thus, where the effect of the state court's direction is to grant a new trial, the judgment will not be final. (Gospel Army, supra, 331 U.S. 543 at 546.)

There is no reason to believe that the trial court to which the matter has been remanded will not rule on independent state grounds. The matter, therefore, is not ripe for consideration by this Honorable Court at this time.

II

PETITIONER HAS MISCONSTRUED
THE DETERMINATION BELOW IN
AN EFFORT TO CREATE A FEDERAL
QUESTION WHICH DOES NOT EXIST.

In an effort to create a federal question, the Petitioner has deliberately misconstrued the judgment of the Superior Court of California.

The court below simply admonished the trial court to which it had remanded the case to accept the relevant religious principles and application of same pursuant to this Honorable Court's decisions in Watson v. Jones (1872) 80 U.S. 679, 20 L.Ed. 669 and Jones v. Wolf (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020. The admonition becomes applicable, of course, only if an ecclesiastical issue is raised. None has been raised.

As the lower court stated in its judgment, "The only question is whether

Appellant [Gipe] was entitled to receive severance pay upon his termination."

(See Petition, App. A, p. A8.) There is no issue as to the right of Petitioner to discharge Mr. GIPE.

The right of Mr. GIPE to recover the severance pay arises in large part from the letter of April 4, 1979 (see Petition, App. B, p. A22) which states, inter alia:

"If you cooperate in this matter and cause no further confusion or division, we will extend to you the courtesy of a week for a year of service of termination pay."

Nowhere in that sentence is it stated, as Petitioner would have us believe, that the words "confusion or division" connote any ecclesiastical meaning.

"Confusion" and "division" are not ecclesiastical words of art, but rather are very secular concepts. Webster's

Third New International Dictionary of the
English Language, Unabridged (1971),

defines these words as follows:

Confusion:

- "(1) overthrow, defeat, ruin
destruction
- "(2) a) a state of being dis-
comfited, disconcerted,
chagrined or embarrassed
b) state of being confused
mentally, lack of certainty,
orderly thought or power
to distinguish, choose or
act decisively."

Division:

- "(1) a) the act, process, or an
instance of dividing into
parts or portions:
Partition
b) the act, process or
instance of dividing or

distributing among a number:

Distribution, apportionment."

In its judgment, the Appellate
Department of the Superior Court points
out:

"Where the terms of a contract are ambiguous or uncertain and it is necessary to examine extrinsic circumstances to ascertain the intent of the parties, the trial court has a duty to construe the contract's language only after the parties are afforded an opportunity to produce evidence surrounding its effect and the conduct of the parties thereto."
(See Petition, App. A, p. A6.)

As this Honorable Court held in the case of Jones v. Wolf (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S.Ct. 3020, in church property disputes, state courts may apply neutral principles of law in reviewing local charters, state statutes and other documents.

Obviously, respondent has the right to a trial on the merits to establish what the language contained in the April 4, 1979 letter means. Such a secular determination does not infringe upon ecclesiastical authority nor must a court inquire into doctrinal teachings to reach a conclusion on that issue.

Recognizing the limitations placed upon judicial review of ecclesiastical tribunals set out by this Honorable Court in the case of Serbian Eastern Orthodox Diocese v. Milivojeovich (1976) 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151, one must differentiate between the issues involved: Purely ecclesiastical in the case of Serbian, etc., supra, and purely secular in the case at bar.

As Justice REHNQUIST stated in General Council on Finance and Administration of the United Methodist Church v.

Superior Court of Calif., County of San Diego (1978) 439 U.S. 1355 at 1369, 99 S.Ct. 35, 58 L.Ed.2d 63:

"Such considerations [as those found in Serbian, etc., supra] are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged. As the Court stated in another context: 'Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may with impunity, commit frauds upon the public.'" (Citations omitted.) (General Council on Finance, etc., v. Superior Court, supra, 439 U.S. 1355 at 1373.)

Thus, to permit unbridled behavior "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." (Reynolds v. United

States (1879) 98 U.S. 145, 166-167,
25 L.Ed. 244, 250.)

"The First Amendment does not
require the States to adopt a rule of
compulsory deference to religious
authority in resolving church property
disputes, even where no issue of
doctrinal controversy is involved."
(Jones v. Wolf (1979) 443 U.S. 595,
595-596, 99 S.Ct. 3020, 61 L.Ed.2d 775.)

* * *

CONCLUSION

Respondent respectfully urges that the Petition for Writ of Certiorari should be denied based upon the grounds that (1) there exists no final judgment by the highest court in the State of California, and (2) no federal question exists.

Respectfully submitted,

ALBERT J. REYFF
Acting Labor Commissioner
of the State of California

By H. Thomas Cadell, Jr.
H. THOMAS CADELL, JR., Esq.
Attorney for
Real Party in Interest
Richard A. Gipe

SUPREME COURT OF THE UNITED STATES

No. 82-1216, October Term 1982

WORLDWIDE CHURCH OF GOD,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
ORANGE COUNTY (RICHARD A. GIPE,
REAL PARTY IN INTEREST),

Respondent.

CERTIFICATE OF SERVICE

I, H. THOMAS CADELL, JR., the attorney of record for RICHARD A. GIPE, Real Party in Interest, respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of March, 1983, I served copies of Respondent's Brief in Opposition to Granting of Writ of Certiorari by depositing in the United States mail three copies thereof, with first-class postage prepaid, in an envelope addressed to each attorney of record as follows:

RALPH K. HELGE, Esq.
201 S. Lake Ave., Suite 706
Pasadena, CA 91101

It is further certified that all parties required to be served have been served in accordance with Supreme Court Rule 28.

H. Thomas Cadell, Jr.
H. THOMAS CADELL, JR., Esq.
Attorney for
Real Party in Interest
Richard A. Gipe

No. 82-1216

Office-Supreme Court, U.S.
FILED

APR 13 1983

ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

October Term, 1982

WORLDWIDE CHURCH OF GOD,
Petitioner,

VS.

RICHARD A. GIPE,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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No. 82-1216
In the Supreme Court of the United States
October Term, 1982

WORLDWIDE CHURCH OF GOD,
Petitioner,

vs.

RICHARD A. GIPE,
Respondent.

**PETITIONER'S REPLY TO RESPONDENT'S
BRIEF IN OPPOSITION TO GRANTING
WRIT OF CERTIORARI**

I. THE DECISION BELOW IS A "FINAL JUDGMENT OR DECREE" WHICH IS RIPE FOR ADJUDICATION BY THIS COURT.

Respondent relies on the case of *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed. 2d 328 (1975), for the proposition that the decision below is not a final judgment for review by this Court. However, the *Cox* case is actually contrary to the position of the Respondent. The *Cox* decision actually found finality in a factual setting similar to this case.

There, the Supreme Court of Georgia reversed a summary judgment and remanded with directions to the trial court for trial. The Georgia Supreme Court, on rehearing, determined that a statute relied upon by the Appellee

was constitutional as a legitimate limitation on the right of freedom of expression contained in the First Amendment.

In *Cox*, the Respondent also argued that the judgment was not a "final judgment" for purposes of a petition to this Court.

In the *Cox* opinion, this Court listed at least four categories of cases where the Court has treated State Court decisions on a Federal issue as a final judgment for purposes of 28 U.S.C. § 1257 "without awaiting the completion of additional proceedings anticipated in the lower State Courts." (420 U.S. at p. 477). The order which is the object of this Petition is "final" *under at least three of the categories* listed in *Cox*. These are as follows:

(1) Even though the case has been remanded for trial, "the Federal issue is conclusive." That is, the Court of Appeals and the Appellate Division of the Superior Court have both held that the question of whether the Respondent "caused further confusion and division in the Church" is a "contract" issue which may be decided by the trial court. (See Petition, Appendix A, pp. A11-A12 and A8-A9). Said holding is directly in conflict with the affidavits by Church ministers that "confusion and division" in the Church is an ecclesiastical term grounded on scriptural interpretation, that the Church hierarchical officials already considered the ecclesiastical issue of whether or not the Respondent had "caused further confusion and division" in the Church and that they had conclusively decided this issue against him. (Petition, Appendix B, pp. A16-A19, A20-A21 and A23. See also the Declaration of Larry Darden, an attorney for the Church and graduate of its theological school, setting forth certain scriptures upon which the Church's ecclesiastical

interpretation of "confusion and division" is based, pertinent excerpts of which are set forth hereinafter as Appendix C beginning at p. 7).

Further, in deciding this "contract" issue, the Appellate Division judgment orders the trial court to engage in a three step ecclesiastical determination. Step one: inquire into Church doctrinal teaching. Step two: determine which are the "relevant religious principles." And step three: to "apply" those relevant religious principles in reaching the Court's own redetermination of the ecclesiastical issue previously determined by the Church.

Not only will this mandate allow civil courts to intrude into areas of ecclesiastical cognizance long prohibited by numerous decisions of this Court. But additionally, in the words of this Court in *Cox*, "it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets". (420 U.S. at p. 479).

(2) The second category of cases referred to in *Cox*, may also be met here, that is, where "the federal issue, finally decided by the highest Court in the State, will survive regardless of the outcome of future State-Court proceedings." The Appellate Division below found that "in this case *the only* basis for Appellant claiming severance pay was the termination letter". (Judgment of the Appellate Department, set forth in Appendix A of the Petition for Certiorari, at p. A5, emphasis added).

The only conditions in the termination letter were to return Church property and to "cause no further confusion and division" in the Church. Thus, the case "could not remotely give rise to a Federal question . . . that may later come here . . .," other than the present Federal question *that is already here*. (*Cox*, 420 U.S. at p. 480).

(3) The fourth category referred to by *Cox* was a situation where "the federal issue has been finally decided in the state courts." Additionally, "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." (*Cox*, *supra*, 420 U.S. at pp. 482-483). *That is the situation we have here.*

If this Court were to grant review, and then decide that only the Church hierarchy has jurisdiction to determine the "relevant religious principles" regarding "confusion and division," and to "apply" those principles, this would be dispositive of the case below.

Such a decision would prevent a trial in which the Church would either be forced on the one hand to submit its doctrinal teachings for the trial court to determine which religious principles are relevant and to apply those principles, or the Church would be forced on the other hand to refuse to submit their religious doctrinal teachings to the Court, guaranteeing judgment against the Church. Either way, the trial and subsequent appeals will only continue to subject the Church to "long and complex litigation which may all be for naught if consideration of the preliminary question . . . (of the trial court's jurisdiction) is postponed until the conclusion of the proceedings." (See *Mercantile National Bank v. Langdeau*, 371 U.S. 555, 558, 83 S.Ct. 520, 522, 9 L.Ed. 2d 523 (1963); *Cox*, *supra*, 420 U.S. 484).

(4) Even the third category referred to by the court in *Cox*, has some elements of this case. That is, "if the party seeking interim review ultimately prevails on the merits, the Federal issue will be mooted." In other words, if the trial court, upon making inquiry into Church doctrine, determines that the application of the Church's "relevant religious principles" requires a determination

that the Respondent did "cause further confusion and division in the Church," the State may accept that decision without further appeal, thus mooting any opportunity for Petitioner to have the issue heard by this Court.

The other case relied upon by the Respondent for the proposition that the "judgment" was not final, is *Gospel Army v. City of Los Angeles*, 331 U.S. 543, 67 S.Ct. 1428 (1947). The language of that case stating why it was not a final order would require that it be considered a final order in this case. There, the case was simply reversed by the state supreme court without direction to the trial court, which this Court found was "effective to remand the case 'for a new trial and places the parties in the same position as if the case had never been tried.'" (331 U.S. at p. 546).

In our case, the judgment of the Appellate Division gives specific directions to the trial court as to how the Federal issue is to be tried—which directions constitute a part of the very Federal issue before this Court. In other words, the parties will not be starting from "the same position as if the case had never been tried."

Thus, for said reasons, the judgment below is a "final judgment" for the purposes of this Court's review.

II. THE RESPONDENT WOULD HAVE CHURCH DOCTRINE DETERMINED BY SECULAR, DICTIONARY DEFINITIONS, CONTRARY TO THE NUMEROUS HOLDINGS OF THIS COURT.

The Respondent argues that the words "confusion" and "division" are not "ecclesiastical words of art." The argument is contrary to the record and to the understanding of the Appellate Department when they directed the trial court to "accept" and "apply" the Church's *religious prin-*

ciples in deciding the issue. (Petition, Appendix A, p. A9). Why apply the Church's "religious principles" unless the words "confusion" and "division" have ecclesiastical meaning?

This is a case in which the parties involved are a Church (speaking through its supervising minister) and a wayward minister of such church. The Church has stated from the beginning that the terms "confusion and division" have ecclesiastical meaning in the Church (see Declarations of ministers Roderick C. Meredith and Leroy Neff, Petition, Appendix B, pp. A16 and A20). In fact, that is the very reason said terms were used in the termination letter.

CONCLUSION

It is therefore respectfully urged that the judgment below is a "final judgment," that the terms "conclusion and division" are ecclesiastical terms of art and that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

RALPH K. HELGE & ASSOCIATES

By **RALPH K. HELGE**

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Dated: April 12, 1983

APPENDIX

APPENDIX C

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Attorneys for Defendant
Worldwide Church of God

**MUNICIPAL COURT IN THE COUNTY OF ORANGE
STATE OF CALIFORNIA
CENTRAL DISTRICT**

No. 125975

RICHARD A. GIPE,
Plaintiff,

vs.

**WORLDWIDE CHURCH OF GOD, a California
Corporation,
Defendant.**

DECLARATION OF LARRY W. DARDEN IN SUPPORT OF DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, LARRY W. DARDEN, hereby state as follows:

(1) That I have first hand, personal knowledge of the facts herein stated and could and would competently testify thereto, under affirmation, if called as a witness.

(2) That I am an attorney in the office of Rader, Helge & Gerson, attorneys for defendant Worldwide Church of God, and I am licensed to practice law in the State of California.

(3) That I am a baptized member of the Worldwide Church of God and a graduate of its theological and ministerial training school, Ambassador College, located in Pasadena, California. I have served the Church in the capacity as one of its attorneys ever since my graduation from law school and admittance to the California Bar. As a result, I am thoroughly acquainted with the ecclesiastical practices, customs, doctrines and procedures of Church discipline and government.

* * *

(8) The determination of the Worldwide Church of God hierarchical officials that Richard A. Gipe was causing "confusion and division" in the Church was based on New Testament scriptures including Romans 16:17, I Corinthians 14:33 and James 3:16. These scriptures are as follows:

Romans 16:17, "Now I beseech you, brethren, mark them which cause divisions and offenses contrary to the doctrine which ye have learned; and avoid them."

I Corinthians 14:33, "For God is not the author of confusion, but of peace, as in all churches of the saints."

James 3: 16, "For where envying and strife is, there is confusion and every evil work."

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Executed this 9th day of December, 1980, at Pasadena, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Larry W. Darden
Larry W. Darden